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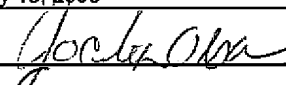
PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)

36032/093

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Signature



Typed or printed

Name Jocelyn Olson

Application Number

09/813,075

Filed

03/20/2001

First Named Inventor

Edward F. Chamberlain

Art Unit

3644

Examiner

Tien Quang Dinh

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

- ☐ applicant/inventor.
☐ assignee of record of the entire interest.
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
(Form PTO/SB/96)

☒ attorney or agent of record.

Registration number 52,135

☐ attorney or agent acting under 37 CFR 1.34.

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Signature

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Typed or printed name

303-938-9999 x 22

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February 18, 2008

Date

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Practitioner's Docket No. 6032/093

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Edward F. Chamberlain et al.

Application No.: 09/813,075

Group No.: 3644

Filed: 03/20/2001

Examiner: Tien Quang Dinh

For: PORTABLE BALLOON LAUNCHER SYSTEM

Mailstop AF

Commissioner for Patents

P. O. Box 1450

Alexandria, VA 22313-1450

REMARKS ACCOMPANYING PRE-APPEAL BRIEF REQUEST FOR REVIEW

These remarks accompany a notice of appeal and a pre-appeal brief request for review. Please enter the remarks as set forth below.

REMARKS

I. General:

Claims 25-26 were rejected under 35 U.S.C. § 112, second paragraph as being indefinite. According to the Examiner, claim 25 “is vague and misleading since it seems that application is claiming two platforms and yet it is written to claim only one platform”. For at least the reasons that follow, Applicants submit that the Examiner has erred.

Claims 9-13, 21, 25 and 26 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 3,915,529 to Bernier (hereinafter referred to as “Bernier”) in view of U.S. Patent No. 3,195,835 to Eyre et al. (hereinafter referred to as “Eyre”) and possibly the admitted prior art on page 4 of the disclosure. For at least the reasons that follow, Applicants submit that the Examiner has erred.

Claims 22-24 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Bernier in view of Eyre, and in further view of U.S. Patent No. 6,286,462 to Burns (hereinafter referred to as “Burns”). For at least the reasons that follow, Applicants submit that the Examiner has erred.

Claims 27-35 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Bernier in view of Eyre, in further view to Burns, and yet in further view of U.S. Patent No. 6,226,813 to Wilburn et al. (hereinafter referred to as “Wilburn”). For at least the reasons that follow, Applicants submit that the Examiner has erred.

II. Claims 25 and 26 are not vague or misleading and comply with 35 U.S.C. § 112, second paragraph.

Claim 25 depends from claim 9. Claim 9 recites “extending at least one panel from the case to provide a launch platform”. Claim 25 recites “extending another panel from the case to provide the launch platform”. Applicant submits that the scope and meaning of claim 25 is clear. Claim 9 clearly indicates that at least one panel is extended and claim 25 clearly indicates that another panel, in addition to the at least one panel is extended. Accordingly, Applicants disagree with the Examiner’s contention that claim 25 is unclear. Furthermore, Applicants disagree with the Examiner’s contention that claim 25 is claiming only one platform. Clearly, claim 25, which depends from claim 9, includes the “at least one panel” and “another panel” that are extended to provide the launch platform.

Claim 26 depends from claim 25 and recites “at least one of the panels extends beyond the end of the balloon”. Clearly, the “at least one of the panels” in claim 26 refers to antecedent “at least one panel” of claim 9 and/or the antecedent “another panel” of claim 25. Accordingly, Applicants respectfully disagree that claim 26 is vague or misleading, as the Examiner contends.

III. Bernier is non-analogous art; and, therefore, Bernier cannot be relied upon under 35 U.S.C. § 103 and each of the 35 U.S.C. § 103(a) rejections in the final office action are improper.

To rely on a reference under 35 U.S.C. § 103 it must be analogous prior art. See M.P.E.P. § 2141.01(a), I. A reference in a different field may be reasonably pertinent if it is one which, because of the matter with which it deals, logically would have commended itself to an inventor’s attention in considering his or her invention as a whole. Id. “While Patent Office classification of references and cross-references in the official search notes of the class definitions are some evidence of “nonanalogy” or “analogy” respectively, the court has found “the similarities and differences in structure and function of the inventions carry far greater weight. See M.P.E.P. § 2141.01(a), II.

Applicants respectfully submit that the compact field kitchen device of Bernier does not deal with matter which logically would have commended itself to Applicants’ attention considering Applicants’ invention as a whole relates to a balloon launching method. Furthermore, Applicants respectfully point out that the Patent Office has assigned the present application and Bernier to different classes. Moreover, there are substantial differences between the function of the present application as recited in the claims and the function of the “compact field kitchen” in Bernier. See examples in M.P.E.P. § 2141.01(a), IV.

While the Examiner contends that Bernier teaches a launch platform on which an uninflated balloon can be placed, the device of Bernier is a compact field kitchen used to cook food. Bernier simply does not teach that the compact field kitchen provides a launch platform on which an uninflated balloon can be placed. Furthermore, while one of ordinary skill in the art may be motivated to use the “compact field kitchen” to cook food, one of ordinary skilled in the art would simply not contemplate using the compact field kitchen device of Bernier for the purpose of providing a launch platform for a balloon. Furthermore, one of ordinary skill in the art would not contemplate modifying

the “compact field kitchen” of Bernier to arrive at the claimed inventions recited in the claims. Accordingly, Applicants respectfully submit that the compact field kitchen of Bernier is non-analogous art and cannot be relied upon under 35 U.S.C. § 103.

IV. Neither Bernier, Eyre, Burns, nor Wilburn, whether alone or in combination, each or suggest all the elements of claims 9-13 and 21-35.

Claim 9 recites the step of “opening a cover on a case and extending at least one panel from the case to provide a launch platform on which an uninflated balloon can be placed”. According to the Examiner, Bernier teaches this step. However, Bernier relates to a “compact field kitchen”. Bernier does not teach or suggest that the “compact field kitchen” includes at least one panel that is extended to provide “a launch platform on which an uninflated balloon can be placed”, as the Examiner contends. Rather, Bernier teaches that reference element 19 is a “mirror” which may be used for personal grooming and that reference element 18 is a “wing section” that provides a work surface for cooking food. See Bernier, Col. 2, ll. 21-35. Furthermore, while one of ordinary skill in the art may be motivated to use the “compact field kitchen” to cook food, one of ordinary skill in the art would not be motivated to use the “compact field kitchen” of Bernier to provide a launch platform for a balloon. Therefore, for at least this reason, claim 9 and claims 10-13 and 21-26, which depend from claim 9, are allowable over Bernier whether in combination with Eyre, Burns, and/or Wilburn.

Regarding claims 10 and 28, Bernier does not teach or suggest that the case disclosed therein “provides an enclosed space for the storage and transport of said uninflated balloon. Again, the device of Bernier is a “compact field kitchen”, not a balloon launching system. Bernier does not teach that the “compact field kitchen” “provides an enclosed space for the storage and transport of said uninflated balloon”. Furthermore, while one of ordinary skill in the art may be motivated to use the “compact field kitchen” to cook food, one of ordinary skill in the art would not be motivated to use a “compact field kitchen” to provide an enclosed space for the storage and transport of said uninflated balloon that is controllably released from a launch bag. Accordingly, for at least this reason, claims 10 and 28 are allowable.

Regarding claims 12 and claim 27, according to the Examiner, Eyre “teaches that the canopy 13 is made out of light weight fabric” and one skilled in the art would have used Lycra as the material in the launch bag of Eyre as a mere substitution of parts.

Applicants respectfully disagree. As the present application teaches, use of an elastic material cradles the balloon more securely as it is inflated. Chamberlain, Pg. 4, ll. 17-19. In particular, as figures 5 and 6 of the present application shows, use of an elastic material may allow the launch bag to cradle the balloon more securely during various stages of inflation.

Despite elastic materials being known at the time of the invention of Eyre, rather than including an elastic material in the canopy 13, the device of Eyre uses straps 61 that are let out as the balloon is inflated. Eyre, Col. 3, ll. 22-29. In this manner the straps 61 can be adjusted so that the canopy 13 cradles the balloon as it is inflated.

Plainly, the device of Eyre takes a completely different approach than the present invention; and Applicants respectfully point out that given that the device of Eyre already includes straps that allow the canopy 13 to cradle the balloon as it is inflated, it would not be obvious to further include an elastic material for this purpose. Therefore, for at least this reason, claims 12 and 27 and claims 28-35, which depend from claim 27, are allowable over the cited references, whether alone or in combination with each other.

Furthermore, with respect to claim 12 and 27, although the Examiner contends that cotton is elastic, Applicants' point out that Eyre does not teach that the canopy 13 is made from cotton. Accordingly, Applicants submit that the Examiner's opinion on the elasticity of cotton is not germane to the issue of patentability.

Claim 25 recites the step of "extending another panel from the case to provide the launch platform on which the uninflated balloon can be placed" and claim 35 recites "wherein the launch site includes a launch platform that is provided, at least in part, by extending a first and a second panel from an open case". According to the Examiner, Bernier teaches this step in figure 1A. However, as pointed out above with respect to claim 9, Bernier relates to a "compact field kitchen". Bernier plainly does not teach or suggest that the device is provided with panels that provide a launch platform on which an uninflated balloon can be placed, as the Examiner contends. Furthermore, while one of ordinary skill in the art may be motivated to use the "compact field kitchen" to cook food, one of ordinary skill in the art would not be motivated to use a "compact field kitchen" to provide a launch platform for a balloon. Therefore, for at least this reason, claims 25 and 35 are allowable over the cited references.

Regarding claim 26, there simply is no requirement that Applicants “provide criticality” for the element “at least one of the panels extends beyond the end of the balloon”, as the Examiner requires. The M.P.E.P. plainly provides that “all words in a claim must be considered in judging the patentability of that claim against the prior art.” M.P.E.P. § 2143.03. Furthermore, although the Examiner contends that figure 2 of Eyre shows a balloon that is less than the platform, it simply does not teach or suggest “a panel” as recited in the claims; and, therefore, could not possibly teach or suggest “at least one of the panels extends beyond the end of the balloon”. Furthermore, with respect to the Examiner’s contention that Applicants are trying to claim an apparatus and not a step, again, the M.P.E.P. plainly provides that “all words in a claim must be considered in judging the patentability of that claim against the prior art.” M.P.E.P. § 2143.03. In view of the foregoing, Applicants submit that claim 26 is allowable over the cited art.

Claim 23 recites “at least one fitting that allows the case to be secured to a solid structure and claim 33 recites “at least one fitting that enables the case to be secured to a solid structure”. According to the Examiner Burns teaches a “fitting 34” that allows the case to be secured to a solid structure. Applicants respectfully point out that Burns teaches that the ring 34 is used for engaging hooks 32 so that a strap 30 may be used to carry or pull the pet carrier 20. Burns simply does not teach or suggest that the ring 34 allows the case to be secured to a solid structure. Furthermore, whereas Wilburn teaches an “anchoring system for a beach blanket”, Wilburn simply does not teach or suggest a fitting that allows a case to be secured. Accordingly, none of the cited references teaches a fitting that allows the case to be secured to a solid structure.

V. Conclusion:

Applicants submit that the subject matter of the present application is novel, nonobvious, and useful. Accordingly, Applicants respectfully request that the rejections be withdrawn and that the present application issue as early as possible.

Dated: February 12, 2008

/Michael Pruden/
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